

**ILLINOIS NATIONAL INSURANCE COMPANY**  
**4501 Northpoint Parkway**  
**Alpharetta, Georgia 30222**

**NAIC COMPANY CODE 23817**

**MARKET CONDUCT EXAMINATION REPORT**

**as of**  
**December 31, 2003**

**PREPARED BY INDEPENDENT CONTRACTORS**  
**FOR THE**  
**COLORADO DEPARTMENT OF REGULATORY AGENCIES**  
**DIVISION OF INSURANCE**

**Illinois National Insurance Company  
4501 Northpoint Parkway  
Alpharetta, GA 30022**

**MARKET CONDUCT  
EXAMINATION REPORT  
as of  
December 31, 2003**

**Prepared by**

**Wayne C. Stephens, CIE**

**Kathleen M. Bergan, AIE**

**Independent Contract Examiners**

April 8, 2004

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway Suite 850  
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of Illinois National Insurance Company's private passenger automobile business, has been conducted. The Company's records were examined at its Regional office located at 4501 Northpoint Parkway, Alpharetta, Georgia 30022.

The examination covered a one-year period from January 1, 2003 to December 31, 2003.

A report of the examination of Illinois National Insurance Company is, herewith, respectfully submitted.

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Wayne C. Stephens, CIE

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Kathleen M. Bergan, AIE

Independent Market Conduct Examiners

**MARKET CONDUCT  
EXAMINATION REPORT  
OF THE  
ILLINOIS NATIONAL INSURANCE COMPANY**

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**COMPANY PROFILE**

Illinois National Insurance Company (hereinafter referred to as the Company) was incorporated on October 5, 1933 under the laws of the State of Illinois. The Company is wholly owned by New Hampshire Insurance Company. On May 15, 1969, American International Group, Inc. (AIG) acquired the parent company and its subsidiaries.

The Company was issued a Certificate of authority in Colorado on December 23, 1983 and is licensed in 45 states and the District of Columbia. The Company writes Nonstandard Auto business through independent agents.

\*As of calendar year 2003, the Company had reported premium in Colorado of \$22,847,000 for Private Passenger Automobile, representing a .79% market share in Colorado.

\*Data as reported in the Colorado Insurance Industry Statistical report.

### **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to Private Passenger Automobile insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2003 to December 31, 2003.

File sampling was based on a review of underwriting and claims files that were randomly selected by using "ACL"™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systematic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of examination (e.g. timeliness of claims payment), and if one or more samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Producers
3. Underwriting and Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

**EXAMINERS' METHODOLOGY**

The examiners reviewed the Company's Private Passenger Automobile underwriting and claims practices to determine compliance with the Colorado insurance laws as outlined in Exhibit 1.

On July 1, 2003, the Colorado Auto Accident Reparations Act, also known as the motor vehicle no-fault insurance law was repealed pursuant to § 10-4-726, C.R.S. Upon enactment of HB 03-1188, the Colorado law index was changed to include modification and clarification of laws under Section 10-4-600. Because this examination included the repeal and the addition of new Colorado auto insurance laws during the period under examination, both No-Fault (PIP) and tort reform as well as additional legislative enactments during 2003 are included in Exhibit 1.

**Exhibit 1**

<b>Law</b>	<b>Subject</b>
<b>Colorado PIP/No fault Related laws</b>	
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-706.	Required coverage - complying policies - PIP examination program.
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.



<b>Law</b>	<b>Subject</b>
Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts practices prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts practices.
Regulation 1-1-6	Certification of Forms
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests.
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Insurance Scoring.
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Auto Accident Reparations Act (No Fault) Rules and Regulations.
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.
<b>Tort Reform Legislation and Revised laws- Effective July 1, 2003</b>	
Section 10-4-615	Motorist insurance identification database program.
Section 10-4-616	Disclosure of credit reports.
Section 10-4-617	Auto theft prevention authority.
Section 10-4-618	Unfair or discriminatory trade practices legislative declaration.
Section 10-4-619	Coverage compulsory.
Section 10-4-620	Required coverage.
Section 10-4-621	Required coverages are minimum.
Section 10-4-622	Required provision for intrastate and interstate operation.
Section 10-4-623	Conditions and exclusions.
Section 10-4-624	Self-insurers.
Section 10-4-625	Quarterly premium payments.
Section 10-4-626	Prohibited reasons for nonrenewal or refusal to write a policy of Automobile insurance.

<b>Law</b>	<b>Subject</b>
Section 10-4-628	Refusal to write-changes in-cancellations-nonrenewal
Section 10-4-629	Cancellation-renewal-reclassification.
Section 10-4-630	Exclusions of named driver.
Section 10-4-631	Insurers to file rate schedule.
Section 10-4-632	Reduction in rates for drivers aged fifty-five or older who Complete a driver's education course-legislative declaration
Section 10-4-633	Certification of policy and notice forms.
Emergency Regulation 03-E-2, 5, and 10	Transition from No-Fault Auto to Tort System.

### **Company Operations/Management**

The examiners reviewed Company management, implementation of quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

### **Producers**

The examiners reviewed business applications written in the State of Colorado for the period under examination and compared those documents against the list of producers provided by the Company. The Company uses Independent Agents licensed to write business through the Company.

### **Contract Forms and Endorsements**

The following Private Passenger Automobile forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance:

<b>Form Title</b>	<b>Form Number</b>
Personal Auto Policy	PP 00 01 06 94
Amendment of Policy Provisions-Colorado	PP 01 61 07 98
Increased Limits Transportation Expenses Coverage	PP 03 02 06 94
Towing and Labor Costs Coverage	PP 03 03 04 86
Split Liability Limits	PP 03 09 04 86
Additional Insured-Lessor	PP 03 19 08 86
Mexico Coverage	PP 03 21 06 94
Joint Ownership Coverage	PP 03 34 09 93
Mexican Collision Coverage	PP 03 57 02 92
Uninsured Motorists Limits	PP 04 01 04 86
Uninsured Motorists Coverage-Colorado	PP 04 25 03 99
Property Damage Uninsured Motorists Coverage-CO	PP 04 37 04 99
Diminution in Value	PP 13 01 12 99
Personal Auto Policy Renewal Notice	AIGDEC 8/96
Lienholder Deductible Endorsement	LIEN02 11 91

<b>Form Title</b>	<b>Form Number</b>
Additional Equipment Endorsement	ADDON 1 04 91
Named Driver Exclusion Agreement	CO DRX 0402
Mid-Term No-Fault Tort Transition Request	CO MID 0703
Important Renewal Notice-No Fault To Tort Transition Explanation.	CO TRANS 0703
Colorado Uninsured and Underinsured Coverage Rejection	CO UMRJ 0703
Colorado Upload Application	CO UAPP 0703
Innocent Prior Supplement Application	CO SAPP 1002
Personal Auto Policy Jacket	40873 08 96
Amendatory Endorsement	CW 00 01 04 96
Renewal Notice-12-6 month conversion	RN 01 0401
Authorization Agreement For Electronic Funds Transfer	CW EFT 0602
Colorado Private Passenger Automobile Insurance Disclosure Form	CO 01 0703
Lienholder Clause	LH 01 02 97

### **In-Force /Cancellations/Nonrenewals/Surcharges/Renewals**

For the period under examination, the examiners randomly selected the following underwriting samples to determine compliance with underwriting practices:

<b>Underwriting Lists</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
In-Force	20,733	100	.48%
Cancellations	898	50	5.6%
Nonrenewals	66	50	76%
Surcharges	526	50	9.5%

### **Rating**

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, discounts, and final premium calculations.

### **Claims**

For the period under examination, the examiners randomly selected the following samples to determine compliance of claims handling practices:

<b>Claim Lists</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
Claims Paid	4,609	100	2%
Claims Denied	576	100	17%
PIP paid claims	79	50	63%

**EXAMINATION REPORT SUMMARY**

The examination resulted in five (5) issues arising from the Company's apparent failure to comply with Colorado insurance law that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

**Company Operations and Management:**

In the area of company operations and management, there is one issue addressed in this report.

- A. Failure to certify, and use of some non-compliant forms.

**Underwriting:**

In the area of underwriting, three (3) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements that must be complied with whenever policies are issued, canceled, rejected, non-renewed, or surcharged. The issues in this phase are identified as follows:

- B. Failure, in some cases, to offer a named driver exclusion. (This was Issue H in the previous 1998 Market Conduct Examination Report.)
- C. Failure to provide policyholders with proper notice of an increase (surcharge) in premium. (This was Issue D in the previous 1998 Market Conduct Examination Report.)
- D. Failure, in some cases, to provide a specific reason for Nonrenewal of a PPA policy.

It is recommended that the Company review its underwriting practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as they relate to these issues.

**Rating:**

In the area of Rating, no compliance issues are addressed in this report.

**Claim Practices:**

In the area of claim practices, one (1) compliance issue is addressed in this report. The Issue arises from Colorado insurance law requirements dealing with claims handling practices, payment of PIP claim benefits, and the timeliness of claim payments. The issue in this phase is identified as follows:

- E. Delay, in some cases, in the payment of PIP benefits. (This was Issue I in the previous 1998 Market Conduct Examination Report and is therefore considered a repeat violation.)

It is recommended that the Company review its claim handling practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

**ILLINOIS NATIONAL INSURANCE COMPANY**

**PERTINENT FACTUAL FINDINGS**

**PERTINENT FACTUAL FINDINGS**

**OPERATIONS AND MANAGEMENT**

**Issue A: Failure to certify, and use of some non-compliant forms.**

Section 10-4-725, C.R.S., Certification of policy and notice forms, states , in part:

- (1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted by July 15, 1993, and not later than July 1 of each subsequent year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.
- (2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any NEW policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one (31) days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

Section 10-4-720, C.R.S., Cancellation-renewal-reclassification, states, in part:

- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, *on a form which has been certified by the insurer* [emphasis added] and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:
- (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction.
- (d) If there is coupled with the notice an offer to continue or renew the policy in accordance with section 10-4-721, *the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;* [emphasis added]



Colorado Regulation 5-2-3 (Amended)-Auto Accident Reparations Act states, in part,

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-720(2), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your Right to Protest", the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

Section 10-4-633, C.R.S. (Effective July 1, 2003) Certification of Policy and notice forms, states:

(1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be

used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

During the review of the Company Certified Form filing and the actual Cancellation, Nonrenewal and Surcharge Notices sent to insureds, it was noted that the surcharge form was not filed or included as part of the actual annual forms certification filing submitted to the Colorado Division of Insurance on August 22, 2003. In addition, it appears that all three notices do not comply with Colorado insurance law, as the forms do not prominently display the "Right to Protest", a driver exclusion offer, or premium difference if a driver is excluded.

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**Recommendation Number 1:**

Within 30 days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-633 (Effective July 1, 2003), 10-4-720, 10-4-725 C.R.S. and Regulation 5-2-3. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan to ensure that all forms are filed and compliant with Colorado insurance law.

**PERTINENT FACTUAL FINDINGS**

**UNDERWRITING AND RATING**

**Issue B: Failure, in some cases, to offer a named driver exclusion. (This was Issue H in the previous 1998 Market Conduct Examination Report).**

Section 10-4-719.7, C.R.S. Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited, states, in part:

(b)(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

Section 10-4-721, C.R.S., Exclusion of named driver, states, in part:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

Section 10-4-630, C.R.S. (Effective July 1, 2003), Exclusion of named driver states, in part:

(1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

During the course of the review of nonrenewals and surcharges, it was noted that the Company did not provide an offer of a named driver exclusion in some cases. In the case of nonrenewals, the notice did not show an option regarding an exclusion of the person which prompted the nonrenewal. In the case of surcharges, it appears that the Company did not send a surcharge notice with the renewal.

The following displays the population, sample size, number of exceptions and percentage to sample for policies nonrenwed and surcharged for the period under review:

**Private Passenger Automobile Nonrenewed in 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
65	50	17	34%

An examination of fifty (50) policies nonrenewed, representing 77% of those policies nonrenewed by the Company during the examination period, showed seventeen (17) exceptions (or 34% of the sample) wherein the Company failed to offer a named driver exclusion as required by the Colorado insurance law.

**Private Passenger Automobile Surcharges in 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
626	50	23	46%

A review was performed of fifty (50) surcharged policies, representing 8% of all private passenger automobile policies surcharged by the Company for the period under examination. From the sample, twenty-three (23) or 46% of surcharged policies were not offered a named driver exclusion.

In addition, the Company underwriting manual (12/03 version) states:

**Section 6 Driver Rating:**

- Named insured may not be excluded.

Since Colorado insurance law does provide for a named insured driver on the policy to be excluded (if there is more than one driver on the policy), it appears that the Company's underwriting manual is not in compliance with Colorado insurance law.

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**Recommendation Number 2:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-719.7 and 10-4-721, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has offered a named driver exclusion in those cases where it is warranted and implemented necessary changes in its policies and procedures to ensure compliance with Colorado insurance law.

In the previous Market Conduct examination report as of December 31, 1998, the Company was cited for Failure to offer a named driver exclusion. This violation resulted in Recommendation number 8 of Final Agency Order O-00-142. Failure to comply with the previous recommendation and order of the commissioner may constitute a violation of Section 10-1-205, C.R.S.

**Issue C: Failure to provide policyholders with proper notice of an increase (surcharge) in premium. (This was Issue D in the previous 1998 Examination Report)**

Section 10-4-719.7, C.R.S., Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited, states, in part:

(b) (I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include as part of such renewal a written notice naming the party specifically excluded from coverage.

(2) An insured who believes the provisions of subsection (1) or (1.5) of this section have been violated shall have the right to file a protest with the commissioner pursuant to the provisions of section 10-4-720.

Section 10-4-720 (C), C.R.S., Cancellation-Renewal-reclassification, states:

(1) Except in accordance with the provisions of this part 7, no insurer shall cancel or fail to renew a policy of insurance which complies with this part 7, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 7.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:

Section 10-4-629, C.R.S. (Effective July 1, 2003) Cancellation-renewal-reclassification states:

(1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

(a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;

(b) The proposed effective date of the action;

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

(d) If there is coupled with the notice an offer to continue or renew the policy in accordance with section 10-4-628, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;

(e) The right of the insured to replace the insurance through an assigned risk plan;

(f) The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice;

In the course of the review of policies that were surcharged, the Company could not provide documentation that the required notification of the reason for the increase in premium had been provided for surcharged policies at renewal. It appears that only a premium billing notice was sent to the insureds, with no indication as to the reason for the premium increase.

Therefore it appears the Company failed to use a separate surcharge notification, as required by Colorado insurance law, to notify the insured of the following information:

Reason for increase;

Named driver exclusion options;

Right to protest provisions;

Notification of the Colorado Assigned Risk Plan;

Basis of the increase;

Not at fault accidents, Comp or claims less than \$1,000 were applied;

Driver being surcharged not on original policy;

Reason or incidence was within 15-month period.

**Private Passenger Automobile Surcharges in 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
626	50	50	100%

An examination of fifty (50) randomly selected surcharged policies, representing 8% of all private passenger automobile policies surcharged by the Company in 2003, showed fifty instances (100% of the sample) in which the Company failed to provide the required notification to an insured of an increase in premium.

In the review of the Company billing notices on policies surcharged, it appears that the Company gave less than thirty days notice to an insured whose policy was surcharged. In some cases only fifteen (15) days notice was provided to the insured which is not in compliance with Colorado insurance law.

The following table shows the population, sample size, number of exceptions and the percentage to sample for policies surcharged during the period under examination.

**Private Passenger Automobile Surcharges in 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
626	50	14	28%

A review of fifty (50) surcharged policies, representing 8% of all surcharges applied during 2003, showed fourteen (14) or 28% of the sample, that the Company provided less than a 30 day notice to the insured for policies being surcharged.

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**Recommendation Number 3:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-720 and 10-4-629, C.R.S. In the event that Company is unable to provide such documentation, it should be required to provide evidence that it has changed its procedure in surcharging policies at renewal by using the proper notification form in order to comply with the requirements of Colorado insurance law.

In the previous Market Conduct examination report as of December 31, 1998, the Company was cited for Failure to provide policyholders with proper notice of an increase in premium. This violation resulted in Recommendation number 4 of Final Agency Order O-00-142. Failure to comply with the previous recommendation and order of the commissioner may constitute a violation of Section 10-1-205, C.R.S.



**Issue D: Failure, in some cases, to provide a specific reason for Nonrenewal of a PPA policy.**

Section 10-4-720, C.R.S., Cancellation-renewal-reclassification, states, in part,

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

In addition, Colorado Amended Regulation 5-2-3 Auto Accident Reparations Act (No-fault) Rules and Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of §§ 42-1-204, 10-4-704, 10-4-719.7 and 10-1-109, C.R.S., states, in part,

Section 3. Rules

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-720 (2), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

Section 10-4-629, C.R.S., (Effective July 1, 2003) Cancellation-renewal-reclassification states, in part:

(1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known

address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

- (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;
- (b) The proposed effective date of the action;
- (c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).
- (d) If there is coupled with the notice an offer to continue or renew the policy in accordance with section 10-4-628, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;
- (e) The right of the insured to replace the insurance through an assigned risk plan;
- (f) The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice;

During the review of nonrenewal notices, it appeared that in some cases, the Company did not provide to the insured a clear explanation as to the reason for the nonrenewal. There were no underwriting rules stated in the nonrenewal notices, and in some cases, the only description given was "Loss History".

**Private Passenger Automobile Policies Nonrenewed in 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
66	50	4	8%

An examination of fifty (50) randomly selected surcharged policies, representing 76% of all private passenger automobile policies nonrenewed by the Company in 2003, showed four (4) instances (8% of the sample) in which the Company failed to provide a notification to an insured of specific reasons for the nonrenewal.

**Recommendation number 4:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-720 and 10-4-629, C.R.S. and Amended Regulation 5-2-3. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation demonstrating that it will use specific and complying reasons for the nonrenewal of policies and ensure compliance with Colorado insurance law.

**PERTINENT FACTUAL FINDINGS**

**CLAIMS**

**Issue E: Delay, in some cases, in the payment of PIP benefits. (This was Issue I in the previous 1998 Market Conduct Examination Report.)**

Section 10-4-708 C.R.S., Prompt payment of direct benefits, provides, in part:

(1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation.

Additionally, Amended Regulation 5-2-8 [Amended and effective September 1, 2000], Timely Payment of Personal Injury Protection Benefits, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to §§10-1-109, 10-4-704, 10-4-708(1.3), and 10-3-1110(1), C.R.S.

Section 3. Rule

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

The following chart illustrates the significance of error versus the population and sample examined:

**Private Passenger Auto PIP Claims Paid**

Population	Sample Size	Number of Exceptions	Percentage to Sample
78	50	30	60%

An examination of fifty (50) PIP claim files, representing 64% of all PIP claim files paid by the Company during the examination period, showed thirty (30) exceptions (60% of the sample) wherein the Company failed to pay at least one PIP medical bill in each file within the statutory standard as required by Colorado insurance law.

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**Recommendation Number 5:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-708, C.R.S. and Colorado Amended Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling of PIP benefit payments and implemented necessary procedural changes in order to ensure compliance with the Colorado insurance law.

In the previous Market Conduct examination as of December 31, 1998, the Company was cited for delay in the payment of PIP benefits. The violation resulted in Recommendation 9, that the Company correct its procedures which would ensure the timely payments of PIP benefits and comply with Colorado insurance law. Failure to comply with the previous recommendation and order of the commissioner may constitute a violation of Section 10-1-205, C.R.S.

**Summary of Recommendations**

<b><u>ISSUE</u></b>	<b><u>RECOMMENDATION NUMBER</u></b>	<b><u>PAGE NUMBER</u></b>
<b>Operations and Management</b>		
Issue A: Failure to certify, and use of some non-compliant forms.	1	18
<b>Underwriting and Rating</b>		
Issue B: Failure, in some cases, to offer a named driver exclusion. (This was Issue H in the previous 1998 Market Conduct Examination Report.)	2	21
Issue C: Failure to provide policyholders proper notice of an increase (surcharge) in premium. (This was Issue D in the previous 1998 Market Conduct Examination Report)	3	24
Issue D: Failure, in some cases, to provide a specific reason for Nonrenewal of a PPA policy.	4	27
<b>Claims</b>		
Issue E: Delay, in some cases, in the payment of PIP benefits. (This was Issue I in the previous 1998 Market Conduct Examination Report.)	5	29

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